

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 East 42nd Street, Suite 4510
New York, New York 10165

Telephone: (212) 317-1200
Facsimile: (212) 317-1620

sisaacson@faillacelaw.com

January 22, 2019

VIA ECF

Honorable Katherine Polk Failla
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Ortega Hernandez, et al. v. Muzzarella Inc., et al*
17-cv-6164 (KPF)

Dear Judge Failla:

I am an attorney with the office of Michael Faillace & Associates, attorneys for Plaintiff in the above-referenced matter. We write, in accordance with Your Honor's direction, to set forth in a letter Plaintiff's position regarding fixed salaries and spread of hours in the hospitality industry.

1. Employers in the Hospitality Industry may not pay Employees on a Non-Hourly Rate Basis

New York's Hospitality Industry Wage Order provides that, "[e]mployees . . . shall be paid hourly rates of pay. Employers may not pay employees on a daily, weekly, salary, piece rate or other non-hourly rate basis." 12 N.Y.C.R.R. § 146-2.5. This section was added to the Hospitality Wage Order on December 29, 2010.

Accordingly, employers in the Hospitality industry must pay their workers on an hourly basis, and, cannot pay their employees at a fixed rate, regardless of whether or not there is an agreement.

2. Employees in the Hospitality Industry Must be Paid Spread of Hours Pay

New York's Hospitality Industry Wage Order provides that "[o]n each day on which the spread of hours exceeds 10, an employee shall receive one additional hour of pay at the basic minimum hourly rate." 12 N.Y.C.R.R. § 146-1.6(a). Section 146-1.6(d) provides that "[t]his section shall apply to all employees in restaurants and all-year hotels, regardless of a given employee's regular rate of pay." 12 N.Y.C.R.R. § 146-1.6(d). This section was added to the Hospitality Wage Order on December 29, 2010.

Accordingly, even if an employee in the restaurant industry is earning at least the minimum wage, he is still entitled to spread of hours on days in which the spread of hours exceeds ten.

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We thank the Court for its time and attention to this matter.

Respectfully Submitted,

/s/Sara Isaacson
Sara Isaacson

cc: Jason Mizrahi, Esq. (via ECF)
Joshua Levin-Epstein, Esq. (via ECF)